



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 180320301-8551-02]

RIN 0648-XG121

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this rule to implement annual management measures and catch limits for the northern subpopulation of Pacific sardine, for the fishing year lasting from July 1, 2018, through June 30, 2019. This action includes a prohibition on directed commercial fishing for Pacific sardine off the U.S. West Coast, except in the live bait, tribal, or minor directed fisheries. This action is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective July 1, 2018, through June 30, 2019.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034, joshua.lindsay@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the West Coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management

Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Annual specifications published in the **Federal Register** establish these catch limits and management measures for each Pacific sardine fishing year.

The purpose of this final rule is to implement the annual catch levels and reference points for the 2018-2019 fishing year. This final rule adopts, without changes, the catch levels and restrictions that NMFS proposed in the rule published on May 25, 2018 (83 FR 24269), including the OFL and ABC that takes into consideration uncertainty surrounding the current estimate of biomass for Pacific sardine in the U.S. EEZ off the U.S. West Coast. The proposed rule for this action included additional background on specifications and the details of how the Pacific Fishery Management Council (Council) derived its recommended specifications for Pacific sardine. Those details are not repeated here. For additional information, please refer to the proposed rule for this action.

Table 1. Reference Points for the 2018-2019 Pacific sardine fishing year in metric tons

Biomass Estimate	OFL	ABC	HG	ACL	Tribal Set-Aside
52,065	11,324	9,436	0	7,000	800

This final rule implements an OFL of 11,324 metric tons (mt), an ABC of 9,436 mt, and a prohibition on Pacific sardine catch, unless it is harvested as part of the live bait, tribal, or minor directed fisheries, or as incidental catch in other fisheries (Table 1). Additionally, this rule implements an ACL of 7,000 mt, as well as restrictions on the incidental catch of Pacific sardine by other fisheries.

The incidental catch of Pacific sardine in other CPS fisheries will be managed with the following automatic inseason actions to reduce the potential for both targeting and discard of Pacific sardine in these fisheries:

- An incidental per landing by weight allowance of 40 percent Pacific sardine in non-treaty CPS fisheries until a total of 2,500 mt of Pacific sardine has been landed; and
- A reduction of the incidental per landing allowance to 20 percent for the remainder of the 2018-2019 fishing year once 2,500 mt Pacific sardine has been landed.

Pacific sardine is known to comeingle with other CPS stocks; thus, these incidental allowances are established to allow for the continued prosecution of these other important CPS fisheries and reduce the potential discard of sardine. Additionally, this final rule implements an incidental per landing allowance of up to 2 mt per trip in non-CPS fisheries.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** to announce when catch reaches the incidental limits as well as any changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS will make announcements

through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

As explained in the proposed rule, the Quinault Indian Nation requested a set-aside for tribal harvest of 800 mt (the same amount that was requested and approved for the 2017-2018 fishing season). Consistent with this request, NMFS is setting aside 800 mt of the 2018-2019 ACL for tribal harvest (Table 1).

At the April 2018 meeting, the Council voted in support of two exempted fishing permit (EFP) proposals requesting an exemption from the prohibition to directly harvest Pacific sardine. The ACL implemented in this action accounts for the potential of NMFS approval of up to 610 mt of the ACL to be harvested for EFP activities.

Comments and Responses

On May 25, 2018, NMFS published a proposed rule for this action and solicited public comments (83 FR 24269), with a public comment period that ended on June 11, 2018. NMFS received one comment letter from the environmental advocacy organization Oceana during the comment period. After consideration of the public comment, no changes were made from the proposed rule. NMFS summarizes and responds to the comment letter below.

Comment 1: Oceana supported the prohibition on non-tribal directed commercial sardine fishing, but opposed the proposed ACL level of 7,000 mt. Oceana instead requested that NMFS set an ACL of no more than 2,000 mt. Oceana commented that the proposed ACL of 7,000 mt is excessive and not commensurate with the decline in sardine biomass and that NMFS should reduce the ACL to 2,000 mt.

Response: NMFS disagrees that it is necessary to set the ACL lower than 7,000 mt. The ACL should be viewed in the context of the approved northern subpopulation of Pacific Sardine OFL (11,324 mt) and ABC (9,436 mt), which has been reduced from the OFL to account for scientific uncertainty. The Council's SSC endorsed the OFL and ABC, which are derived from control rules in the FMP, as the best scientific information available. The CPS FMP defines overfishing as catch exceeding the OFL. By definition, if catch approaches either the ACL or ABC, which are set below the OFL, overfishing would not be occurring. This rule conservatively limits harvest levels by all sources with an ACL of 7,000 mt, which is below both the OFL and ABC. All incidental catch, live bait, minor directed, and tribal harvest of sardine are managed to stay at or below the ACL. Additionally, as a direct result of the decline in the estimated biomass from the last fishing year, the OFL and ABC implemented through this action are respectively approximately 33 and 40 percent lower than those implemented last year.

Small pelagic species, such as sardine, undergo wide natural fluctuations in abundance related to environmental conditions, even in the absence of fishing pressure. Given that environmental conditions are a strong driver for small pelagic species biomass, and the fact that 7,000 mt is only about 13 percent of the 2018 biomass estimate, it is highly unlikely that reducing the ACL from 7,000 mt to 2,000 mt would measurably contribute to the potential for Pacific sardine abundance to increase. Even in the absence of any fishing mortality, unfavorable environmental conditions could keep the sardine population at a low level. Based on the recent stock assessments and NMFS research, low recent recruitment (i.e., the number of young fish maturing into the spawning population) is the primary cause of the current downward trend in overall

population size. Research suggests recruitment is strongly related to environmental conditions, particularly large-scale oceanographic phenomena.

Comment 2: Oceana also commented that the OFL is not based on the best scientific information available because Oceana construes new research from NMFS Southwest Fisheries Science Center (SWFSC) as demonstrating that the temperature-recruitment relationship based on data from the California Cooperative Oceanic Fisheries Investigations (CalCOFI) survey used to inform the OFL is no longer applicable.

Response: NMFS is committed to using the best scientific information available, and the SWFSC is continuing research to improve our understanding of the relationship between Pacific Sardine productivity and environmental conditions. The new research referenced by Oceana is still under development, has not been formally reviewed, and therefore is not yet a valid rationale to cease using CalCOFI data to gauge the temperature-recruitment relationship. At this time, the CalCOFI-based temperature relationship is still the best scientific information available science to set the OFL.

Comment 3: In addition to commenting on the proposed rule, Oceana's comment requested reconsideration of various aspects of sardine management that are not considered in this action, including changing the start date of the fishery, revision of the Minimum Stock Size Threshold value, and various modifications to the OFL, ABC and HG control rules.

Response: Changes to the management framework of Pacific sardine and to the sardine harvest control rules are set in the CPS FMP and are beyond the scope of this rulemaking. NMFS will take these comments into consideration during related future management planning for the Pacific sardine stock, and recommends Oceana continue to

bring these concerns to the attention of the Council as that body deliberates about the management framework for sardine.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law. There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of these final harvest specifications for the 2018-2019 Pacific sardine fishing season. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2018 the contents of which were based on the best available new information on the population status of Pacific sardine that became available at that time. Making these final specifications effective on July 1, the first day of the fishing season, is necessary for the conservation and management of the Pacific sardine resource because last year's restrictions on harvest are not effective after June 30. The FMP requires a prohibition on directed fishing for Pacific sardine for the 2018-2019 fishing year because the sardine biomass has dropped below the CUTOFF. The purpose of the CUTOFF in the FMP, and for prohibiting a directed fishing when the biomass drops below this level, is to protect the stock when biomass is low and provide a buffer of spawning stock that is protected from fishing and can contribute to rebuilding the stock. A delay in the effectiveness of this rule for a full 30 days would result in the re-opening the directed commercial fishery on July 1.

Delaying the effective date of this rule beyond July 1 would be contrary to the public interest because it would jeopardize the sustainability of the Pacific sardine stock.

Furthermore, most affected fishermen are aware that the Council recommended that directed commercial fishing be prohibited for the 2018-2019 fishing year and are fully prepared to comply with the prohibition.

This final rule is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 20, 2018.

Samuel D. Rauch III,

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National Marine Fisheries Service.

